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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,188

09/29/2003

David A. Selby

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IBM Corporation (SAUL-END) C/O Saul Ewing LLP
Penn National Insurance Tower
2 North Second Street, 7th Floor
Harrisburg, PA 17101

EXAMINER

LASTRA, DANIEL

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

10/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/674,188	Applicant(s) SELBY, DAVID A.	
	Examiner DANIEL LASTRA	Art Unit 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 9-22 have been examined. Application 10/674,188 (INCENTIVE-BASED WEBSITE ARCHITECTURE) has a filing date 09/29/2003.

Response to Appeal Brief

2. In response to Final Office Action dated 04/03/2009, the Applicant filed an Appeal Brief. In view of the Appeal Brief filed on 07/28/2009, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Said claims recite a computer product that only comprises functional descriptive material (i.e. software) without said material being

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executed by a computer. In order to overcome the claim an example would be "computer readable medium comprising computer executable instructions that when executed on a processor performs the method"

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-13 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niu (US 2002/0062245) in view of Herz (US 2001/0014868).

Claims 9 and 16, Niu teaches:

A method of influencing the actions of users of an interactive content- delivery system, comprising the steps of:

identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system (see paragraphs 77-81, 89);

and

presenting users of said interactive content-delivery system with incentives based upon said probabilities (see paragraphs 77-82; 89, 97,115).

Nui does not expressly teach:

and designating certain of said selections as low probability selections based on the identified probabilities, whereby said low probability selections receive higher-value incentives than selections having higher probability of selection than said low probability selections. However, Herz teaches that it is old and well known in the promotion art to offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers (see paragraphs 167, 303). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Nui would offer customers bigger discounts or offers when said customers have a lower probability of accepting said offers, as taught by Herz in order to increase the probability that said customers respond to said offers and become loyal customers.

Claims 10 and 17, Niu teaches:

wherein said identifying step includes at least the step of: estimating probabilities of selection for each possible selection offered by said interactive content delivery system if historical user data for said interactive content delivery system is unavailable (see paragraph 41).

Claims 11 and 18, Niu teaches:

wherein said identifying step further comprises at least the step of analyzing historical user data for said interactive content delivery system to identify probability of selection based on said historical user data (see paragraph 42).

Claims 12 and 19, Niu teaches:

wherein said step of analyzing historical user data comprises at least the step of performing historical analysis of paths taken by users who have not been presented with incentives (see paragraph 43).

Claims 13 and 20, Niu teaches:

wherein said step of analyzing historical user data is continually updated with new historical user data obtained after users of said interactive content-delivery system have been presented with incentives (see paragraph 49).

Claim 8, Niu teaches:

A method of managing website visitors, comprising the steps of:

receiving a content selection from a website user (see paragraph 41);

analyzing said content selection and determining probabilities associated with the selection of all sub-choices presented to said user based on said content selection (see paragraphs 41, 97);

presenting incentives associated with each sub-choice based upon said probabilities (see paragraph 89); and

repeating the above steps until a desired end choice has been selected (see paragraph 115 “don’t offer a buyer an incentive as said buyer does not need an incentive to buy”).

5. Claims 14-15 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niu (US 2002/0062245) in view of Herz (US 2001/0014868) and further in view of Mankoff (US 2003/0028518).

Claims 14 and 21, Niu teaches:

wherein said incentives are selected based on gaming theory and include positive (see paragraph 115 “offering a searcher a discount as an incentive to buy”) but does not expressly teach and negative incentives. However, Mankoff teaches that it is old and well known in the promotion art to offer negative incentives to consumers where the value of said incentives decreases with time in order to trigger said consumers to buy a product earlier in time (see paragraph 33). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Niu would modify his invention to offer negative incentives to consumers, as taught by Mankoff in order to trigger said consumers to buy a product earlier in time.

Claims 15 and 22, Niu teaches:

wherein said interactive content-delivery system comprises a web-based e-commerce site (see paragraph 41).

Response to Arguments

6. Applicant's arguments filed 07/28/09 have been fully considered but they are not persuasive. The Applicant argues that Niu does not teach “identifying probabilities of selection with respect to all selections offered by said interactive content-delivery system”. The Examiner answers that Niu teaches a program that decides to send a promotion based upon a rule set by a manager where the manager tie a promotion to a probability and where said rule set is based upon all selections offered by a content delivery system, such as “viewed between X and Y products”, “viewed between X and Y pages”, “has shopping cart containing X and Y items” “probability of returning” (see

paragraphs 68-78). Therefore, contrary to Applicant's argument, Nui teaches Applicant's claimed invention.

The Applicant argues that Herz does not teach probabilities of selection and therefore, according to the Applicant, cannot teach designating certain selections as low probability nor assigning higher incentives to low probability selections. The Examiner answers that Herz teaches selecting offers that are likely to result in profitable sales based upon the probability of said offers of being accepted by a consumer (see paragraph 37) and offering a bigger offer value to customer that have a lower probability of accepting an offer (see paragraph 167, 303). Therefore, contrary to Applicant's argument, Herz teaches Applicant's claimed limitation.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A WEINHARDT can be reached on (571)272-6633. The official Fax number is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Primary Examiner, Art Unit 3688
October 6, 2009